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February 12, 2009

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FEB 12 2009

Ravalli County Commissioners

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RE: Status of westward "fork" of Simpson Lane

Dear Dick:

I am writing regarding the legal status of Simpson Lane in Ravalli County, Montana. You contacted me in September, 2008, requesting clarification from Ravalli County regarding its interest, if any, in a portion of road claimed to be owned by your client, Peggie Simpson. You described this portion of road as a westward "fork" of what is currently called Simpson Lane. As you know, Simpson Lane is a roadway which provides access to the Poker Joe Fishing Access site, recently involved in a dispute with the Montana Department of Fish, Wildlife & Parks (DFWP).

As you may or may not be aware, it is Ravalli County's practice when questions arise regarding the legal status of a road to encourage the requesting party to hire a road surveyor to conduct a complete historical review of the roadway to determine its legal status. Once this is done, that citizen may petition either the County Commissioners or the court as necessary to abandon an easement or quiet title to the roadway. Once an individual comes forward with his or her own documentation verifying what is believed to be the legal status of the road, our office reviews that documentation to determine how to advise the Commissioners how to proceed. Ravalli County does not have adequate resources to fully research every private citizen inquiry regarding the historical and legal status of roadways, and as you know this area is fraught with legal complexities.

This process was discussed with you in a prior telephone conversation, but due to the long amount of time you and your client had to wait for a response from our office, I wanted to confirm our conversation in writing. I personally apologize for the length of time you waited for this official, written response to your inquiry.

Given that you have been waiting for some time, I will share what information I do have about this road to help assist in your inquiries. I have examined the recorded documentation for Simpson Lane since it was deeded to the County in 1975. I also have reviewed and discussed this documentation at length with staff from the Planning Department, Road & Bridge Department, GIS, and Clerk & Recorder. I also drove down and viewed the roadway in question. I note that a chain and "Keep Out" sign have been erected across this fork, I presume by your client. I have also obtained a copy of the easement recently granted to DFWP by residents of the neighborhood.

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At this time, it appears that the 1975 warranty deed transferred a parcel of land to Ravalli County for roadway purposes, which includes the portion of roadway you are particularly asking about. Under current Montana law, this deed creates at the very least a public easement and right to use the road to some extent. Although this portion of roadway is not on the schedule of county-maintained roads, that does not preclude it from being a county roadway or public easement.

It was the position of DFWP in its pleadings that Ravalli County "received a petition to have the roads accepted for County maintenance on July 27, 1975, and that the roads were accepted for County maintenance based on Certificate of Survey No. 503." However, that case was resolved by settlement agreement and the status of the adoption of the roads was not legally decided by the court. The Commissioner minutes from June 1975 show that a portion of Luby Lane and Simpson Lane was accepted for maintenance by the County but this acceptance specifically excluded the road between your client's Lots 27 and 28.

In 1978 it appears your client petitioned the Commissioners to vacate the portion of the road between Lots 27 and 28. After public hearing, which included protests from "Burlington Northern, Mrs. Kenyon, Daniel and Justine Masse," the Commissioner's denied the request to close the road.

Also of some interest is that the record shows a 1972 recorded easement on an adjoining parcel (shown as Lot W-1 on Certificate of Survey No. 503 which originally deeded the roadway to the County). The easement was apparently to provide access to the property over a nearby railroad crossing south of Luby Ditch. This lot was later part of the Therese-Anthony subdivision and the plat filed for that subdivision in 2003 still depicts this thirty (30) foot access easement at the corner of the property, accessing Simpson Lane from the west end.

Although these documents are not an extensive list of the documents which might affect your client's legal rights to the road and you may already be aware of them, I mention them in the event they will assist you in compiling a history of this road to determine how you wish to proceed.

At this time, Ravalli County can confirm that the portion of Simpson Lane you ask about is not county-maintained but does appear to be a public easement which could be accepted or abandoned by the County after an appropriate public process.

Please feel free to call me if you wish to discuss this further or if you wish to review the material I have obtained prior to deciding how to advise your client. I would be happy to allow you to look at my materials or speak with you further regarding attempting to resolve your question.

Sincerely,



Karen Mahar, Deputy

KS:hs

cc: John Lavey, Planning Department
David Ohnstad, Road & Bridge Department
Ravalli County Commissioners